



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 28051481

Date: AUG. 24, 2023

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (National Interest Waiver)

The Petitioner, a physical therapist, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is attached to this EB-2 immigrant classification. *See* section 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

The Director of the Texas Service Center denied the petition, concluding that the record did not establish that the Petitioner qualifies for a national interest waiver. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter *de novo*. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(B)(i) of the Act.

If a petitioner demonstrates eligibility for the underlying EB-2 classification, they must then establish that they merit a discretionary waiver of the job offer requirement “in the national interest.” *Id.* While neither the statute nor the pertinent regulations define the term “national interest,” *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016), provides the framework for adjudicating national interest waiver petitions. *Dhanasar* states that USCIS may, as matter of discretion,¹ grant a national interest waiver if the petitioner demonstrates that:

¹ *See also Poursina v. USCIS*, 936 F.3d 868 (9th Cir. 2019) (finding USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature).

- The proposed endeavor has both substantial merit and national importance;
- The individual is well-positioned to advance their proposed endeavor; and
- On balance, waiving the job offer requirement would benefit the United States.²

II. ANALYSIS

The Director concluded that the Petitioner qualifies as a member of the professions holding an advanced degree. The record reflects that determination. The remaining issue to be determined on appeal is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

A. Substantial Merit and National Importance

The Petitioner intends to apply her education and experience to healthcare management and patient care in the field of physical therapy. A professional plan describes her endeavor as follows:

With the approval of my visa petition, I will significantly contribute to the field of Physical Therapy, providing first-class healthcare to American organizations and patients, and training other professionals in innovative treatment techniques. Consequently, my unique efforts will potentially impact the U.S. in the following ways:

- Help fill the shortage of healthcare professionals in the U.S.
- Improve the overall health of U.S. citizens
- Improve quality of life rate for U.S. patients
- Maximize efficiency and productivity of U.S. labor practices
- Generate revenue
- Create new job opportunities for U.S. workers
- Train and expand the American workforce

The Director determined that the Petitioner's endeavor to contribute to improvements in healthcare and contribute to the U.S. economy has substantial merit. The Director further determined that the endeavor has national importance. The Director's decision summarizes the Petitioner's intentions to "impact the field by developing and offering integrated physiotherapy solutions in a range beyond the local community offering substantial economic benefits to the region where she operates or even to the nation entirely." The decision lists the evidence submitted that informed her determination: certificates of education and experience, support letters, a letter of intent, and "[o]ther material."

The first prong, substantial merit and national importance, focuses on the specific endeavor that the individual proposes to undertake. The endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Dhanasar*, 26 I&N Dec. at 889.

² See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

While we agree that the Petitioner's proposed endeavor has substantial merit, we do not agree with the Director's determination that the endeavor has national importance. Because we conclude below that the Petitioner did not establish her eligibility for a national interest waiver under the second prong of the *Dhanasar* framework, we need not fully address the Petitioner's eligibility under the first prong. However, we will discuss the issue to inform the Petitioner that this should be addressed in any future national interest waiver proceedings.

In determining national importance, the relevant question is not the importance of the industry or profession in which the individual will work; instead, we focus on the "the specific endeavor that the foreign national proposes to undertake." See *Dhanasar*, 26 I&N Dec. at 889. In *Dhanasar*, we further noted that "we look for broader implications" of the proposed endeavor and that "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field." *Id.* We also stated that "[a]n endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area, for instance, may well be understood to have national importance." *Id.* at 890. Further, to evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement, we look to evidence documenting the "potential prospective impact" of her work.

The Petitioner's professional plan generally describes her intention to work with small- and medium-sized enterprises in the U.S. to improve patient outcomes and healthcare costs and to positively impact the U.S. economy by creating jobs in a field for which there is a talent shortage. The Petitioner provides an overview of her ambition to administer patient care as a physical therapist and to improve healthcare management practices. The record includes several letters of interest from prospective employers to hire the Petitioner as a physical therapist. However, the documentation in the record does not provide insight as to how the Petitioner intends to impact the field or the economy more broadly as an individual working as either a physical therapist or as a manager in a healthcare setting. The letters of interest do not reference managerial duties, and the Petitioner's professional plan does not elaborate on how she intends to divide her time between these occupations. Letters of support in the record discuss her qualifications and experience as a physical therapist and as a member of healthcare management staff; however, beyond offering attestations as to the Petitioner's ability to successfully work in these professions, they do not identify a specific endeavor for which the Petitioner is qualified and well positioned to carry out. While the Petitioner's description of her endeavor is aspirational in the scope of its impact, she does not explain how her work will address a national talent shortage or affect the fields of physical therapy or healthcare management or otherwise have a positive impact on entities outside of that of her immediate employer or patients. The Petitioner cites her intention to share her skills with colleagues to contribute to the improvement of physical therapy techniques and the management of healthcare facilities. In *Dhanasar* we determined that the petitioner's teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 893. The Petitioner has not established the national importance of her proposed endeavor. We will withdraw the Director's finding on this issue. In any future national interest waiver proceedings, the Petitioner must establish that she qualifies under the first prong of the *Dhanasar* framework.

B. Well Positioned to Advance the Proposed Endeavor

The second prong shifts the focus from the proposed endeavor to the individual. To determine whether they are well positioned to advance the proposed endeavor, we consider factors including, but not limited to: their education, skills, knowledge, and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals. *Id.* at 890.

The Director determined that the Petitioner did not establish that she is well positioned to advance her proposed endeavor. The Director's decision states that letters of support from experts and former colleagues describing the Petitioner's qualifications are not sufficient to demonstrate a record of success in the field of physical therapy. The Director further states that the Petitioner has not provided evidence of her recognition in the field, evidence of interest from other parties in the field, or documentation of any progress in reaching the goals of her proposed endeavor. On appeal, the Petitioner submits a brief in which she reiterates her education and experience, stating the following through her attorney:

[The Petitioner's] impressive career has [involved work] in a variety of roles and settings with a primary focus on Physical Therapy treatment, wellness interventions, and manual therapy, and she has a longstanding history of success within her field. The Petitioner has gained invaluable knowledge and expertise in Physical Therapy through her work as a clinician in various settings.

The Petitioner's well-established history of success clearly shows exceptional ability and demonstrates that she is at the top of her field. Similarly [the Petitioner's] wealth of experience working in various roles throughout her career will make her a valuable asset to any Physical Therapy setting looking to improve patient outcomes here in the United States.

With the U.S. healthcare system under such strain, due in part to the aging population and the Covid-19 pandemic, there is no reason why a practitioner with experience as exceptional as [that of the Petitioner] would not be successful in achieving her goal of working as a Physical Therapist. She is, therefore, well-positioned to succeed in her endeavor.

The Petitioner's appeal brief does not specifically address her aforementioned managerial experience. Upon review of the record, while we agree that the Petitioner appears to be an experienced physical therapist, she has not established that she is well positioned to advance a proposed endeavor of national importance. The record includes evidence of her education, certifications, and work experience, including letters from several sources that discuss her successful performance as a physical therapist. The Petitioner also asserts that "the enclosed support letters identify specific examples of how the Petitioner's work has impacted the healthcare and Physical Therapy sectors entirely." We note that, while these letters reference the Petitioner's "innovative methodologies" and "techniques" to restore, maintain, and promote some patients' "overall fitness and health," the authors do not identify specific tactics or processes that the Petitioner herself developed; although they provide evidence to demonstrate that the Petitioner was a valuable asset to her employers and colleagues, they do not

clarify how the Petitioner's qualifications as a physical therapist show that she is well positioned to advance an endeavor of national importance. The Petitioner's brief summarizes her endeavor as follows:

[The Petitioner's] career plan in the United States is to continue working as a Physical Therap[ist], forming partnerships with institutions of great stature, and providing indispensable guidance about national advancements for individuals' health and economic development in the United States.

As stated in discussion of the first prong of the *Dhanasar* framework, the Petitioner's description of her endeavor is generalized and does not specify how she plans to advance her endeavor. Throughout the record and on appeal, the Petitioner's description of her endeavor is vague and includes aspirations that far exceed the normal duties and responsibilities of an individual physical therapist and are not tied to any specific or plausible plan to achieve her proposed objectives. The Petitioner has not provided evidence of qualifications beyond those expected of an individual working in a physical therapy occupation. As the Petitioner has not established that she has developed an endeavor that rises to a level commensurate with that of national importance, we cannot make a determination as to whether the Petitioner is well positioned to potentially achieve an endeavor. The Petitioner has not established that she is well positioned to achieve a proposed endeavor.

The record does not establish the Petitioner is well positioned to advance the proposed endeavor as required by the second prong of the *Dhanasar* precedent decision. Therefore, the Petitioner has not demonstrated eligibility for a national interest waiver. Because the identified reasons for dismissal are dispositive of the Petitioner's appeal, we decline to reach and hereby reserve remaining arguments concerning eligibility under the *Dhanasar* framework. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

III. CONCLUSION

The Petitioner has not met the requisite second prong of the *Dhanasar* analytical framework. We conclude that the Petitioner has not established that she is eligible for or otherwise merits a national interest waiver. The petition will remain denied.

ORDER: The appeal is dismissed.